



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
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Court of Appeals

THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
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Judicial Ethics Opinion
JE-65

Formal Opinion

Question: May a newly appointed Circuit Judge continue to serve on the board of the Transit Authority of River City (TARC)?

Answer: No. References: Code of Judicial Ethics SCR 4.300, Canon 5(B)(1) and 5 G; KRS 96A.020; Attorney General Opinion 76-219.

A newly appointed Circuit Judge wrote the Judicial Ethics Committee concerning whether she could continue to serve on the board of the Transit Authority of River City (TARC). In her letter, the judge wrote:

The board of TARC deals with controversial issues similar to those of any business regarding personnel, expenditure of funds, budget and so forth. Board members are not compensated, but do receive reimbursement for out-of-pocket expenses. TARC is also frequently a defendant in actions brought in Jefferson Circuit Court.... TARC also receives public funding.

TARC is created under the authority of KRS 96A.020. As that statute makes clear, TARC is a governmental agency. See also OAG 76-219. As such it falls squarely under the prohibition contained in Canon 5 G.

Extra-judicial appointment. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his country, state or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

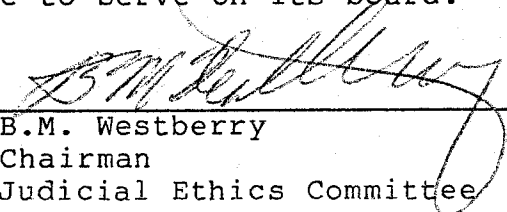
The Committee is also concerned with the prohibitions of Canon 5 B(1) because of the frequency with which TARC is involved in litigation. Canon 5B(1) states:

Civic and Charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.

The committee sees no similarity between this question and Judicial Ethics Opinion JE-64. In that opinion, we gave a qualified yes to the question whether a judge or justice could serve on the board of trustees of a public university. The Code, in Canon 5 B gives specific permission for judges to serve on the boards of educational organizations so long as they are not regularly involved in litigation. There is no such savings clause in the Code for governmental agencies like TARC.

In summary, the Committee believes that TARC is too controversial and too frequently involved in litigation to permit the judge to continue to serve on its board.


B.M. Westberry
Chairman
Judicial Ethics Committee